

Amendment to the TSCA Section 5 Enforcement Response Policy -
Penalty Limit for Untimely NOC Submissions
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

MEMORANDUM

SUBJECT: Amendment to the TSCA Section 5 Enforcement Response Policy -
Penalty Limit For Untimely Submissions

FROM: John J. Neylan III, Director
Policy and Grants Division
Office of Compliance Monitoring (EN-342)

TO: Michael J. Walker
Enforcement Counsel
Toxics Litigation Division (LE-134P)

Enclosed for your information is the amendment. This memorandum addresses the comments raised in your previous correspondence.

1. Consistency With Prior Amendments: The proposed amendment is consistent with the June 8, 1989 Amendment. The intent of both amendments is to provide relief to the inequities of large penalties generated by violations of Notice of Commencement requirements. They are based on situations where the risk associated with the violations is not as great as originally believed because the chemicals have been reviewed by, and cleared the PMN process.

2. Cap The Penalties For Self-Disclosed Violations Only: We do not believe this is necessary as the ERP already provides substantial relief for the voluntary disclosure of violations. In addition, the intent of the

amendment is to lower overall penalties for untimely NOC submissions based on the identified inequity. Limiting the cap to self-disclosed violations would not realize this goal.

If you have any questions concerning the amendment or this memorandum please contact me at 260-7832.

cc: Peter Pagano

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
PESTICIDES AND TOXIC
SUBSTANCES

MEMORANDUM

SUBJECT: Amendment to the TSCA Section 5 Enforcement Response Policy -
Penalty Limit for Untimely Submissions

FROM: John J. Neylan Director
Policy and Grants Division
Office of Compliance Monitoring (EN-342)

TO: Addressees

This memorandum amends the TSCA Section 5 Enforcement Response Policy by placing a limit on the penalty amount that can be assessed for failure to submit timely Notices of Commencement. In addition, the extent levels for these violations are to be reduced from major to significant. These changes would apply to those instances where a company submitted several Notices early and/or late. The penalties collected for untimely Notices of Commencement, for a single case, shall not exceed \$100,000. For example, an inspection reveals that a facility submitted twenty Notices of Commencement 75 days after commencing manufacture and six were submitted 45 days after commencing manufacture. This would be calculated as twenty level 4 (significant extent) violations at \$6,000 per count and six level 6 (significant extent) violations at \$1,300 per count for a total penalty of \$127,800. Pursuant to this amendment the total assessed penalty would be \$100,000.

This change has been made in response to comments that the policy

issued on August 5, 1988, created a large inequity in penalties, in some cases, when a company fails to submit timely Notices of Commencement. This amendment is based on the premise that the risk associated with these violations is not as great as originally believed because the chemicals have been reviewed by, and cleared through the PMN process. This amendment applies to the failure to submit timely Notices of Commencement only. This amendment does not apply for violations of either failing to submit a Notice of Commencement, or withholding or submitting false Or misleading information with regard to a Notice of Commencement.

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This amendment is immediately applicable and should be used to calculate penalties for all administrative actions concerning the failure to submit timely Notices of Commencement instituted. after the date of this policy, regardless of the date of violation. Pending cases should be reviewed to determine whether the penalty calculated under this amendment is lower than the penalty in the civil complaint. If this amendment yields a lower penalty, an amendment to the complaint should be made to substitute the lower penalty.

If you have any questions concerning the amendment contact Peter Pagano of my staff at (202) 260-6747.

attachment

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Addressees

Michael Stahl
Connie Musgrove
Mike Wood
David Dull
Janet Bearden
Phyllis Flaherty
Linda Flick
Maureen Lydon
Jerry Stubbs
Frances Liem
Robert Zisa
Jake Mackenzie

cc: Mary Cushmac, OPPT (TS-794)
Henry Lau, OPPT (TS-799)

Jon Jacobs, OE (LE-134P)
Peter Pagano

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EPA-Region I	EPA-Region II
Linda Murphy, Director	Barbara Metzger, Director
Air Management Division	Environmental Services Division
JFK Federal Building	Woodbridge Avenue
Boston, MA 02203	Edison, NJ 08837
EPA-Region III	EPA-Region IV
Thomas J. Maslany, Director	Winston A. Smith, Director
Air, Toxics, and Radiation	Air, Pesticides & Toxics Mgmt. Div.
Management	345 Courtland Street, N.E.
841 Chestnut Street Building	Atlanta, GA 30365
Philadelphia, PA 19107	
EPA Region V	EPA-Region VI
William H. Sanders III, Director	Stan Meiburg, Director
Environmental Science Division	Air, Pesticides & Toxics Mgmt. Div.
77 West Jackson Blvd. (S-14J)	1445 Ross Avenue
Chicago, IL 60604-3590	Dallas, TX 75202-2733
EPA-Region VII	EPA-Region VIII
Art Spratlin, Director	Patricia Hull, Dir.
Air and Toxic Division	Air Toxic Division
726 Minnesota Avenue	1 Denver Place, Suite 500
Kansas City, KS 66101	999 - 18th Street
	Denver, CO 80202-2413
EPA-Region IX	EPA-Region X
David P. Howekamp, Director	Jim McCormick, Director
Air and Toxics Division	Air and Toxics Division
75 Hawthorne Street	1200 Sixth Avenue
San Francisco, CA 94105	Seattle, WA 98101

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EPA Region I	EPA Region II
Marvin Rosenstein, Chief	Dr. Ernie Regna, Chief
Pesticides and Toxic Substances Br.	Pesticides and Toxic Subst. Br.
JFK Federal Building	Woodbridge Avenue
Boston, MA 02203	Edison, NJ 08837-3679

EPA Region III
Jim Burke, Chief
Toxics and Pesticides Branch
841 Chestnut Street Building
Philadelphia, PA 19107

EPA Region IV
William Patton
Pesticides and Toxic Subst. Br.
345 Courtland Street, N. E.
Atlanta, GA 30365

EPA Region V
Phyllis A. Reed, Chief
Pesticides & Toxic Subst. Br.
77 West Jackson Blvd. (SP-14J)
Chicago, IL 60604-3590

EPA-Region VI
Robert Murphy, Chief
Pesticides and Toxic Substt Br.
Allied Bank Tower
1445 Ross Avenue
Dallas, TX 75202-2733

EPA-Region VII
Leo Alderman, Chief
Pesticides and Toxic Subst, Br.
726 Minnesota Avenue
Kansas City, KS 66101

EPA-Region VIII
C. Alvin Yorke, Chief
Toxics Substance Branch
999 18th Street
Denver, CO 80202-2405

EPA Region IX
Davis Bernstein, Chief
Pesticides and Toxic Subst, Br.
75 Hawthorne Street
San Francisco, CA 94105

EPA Region X
George Abel, Chief
Pesticides and Toxics Substance Br.
1200 Sixth Avenue
Seattle, WA 98101

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Failure to submit a PMN for a chemical substance which would meet all requirements for a polymer exemption under 40 CFR 723.250, except that the company did not file for an exemption, will be assessed as a level 5 violation, per-day.

Failure to submit a PMN for a chemical substance which would meet all requirements for a polymer exemption under 40 CFR 723.250, except that the company did not file for an exemption and the substance was further processed for commercial use, distributed to consumers, or released uncontrolled into the environment will be assessed as a level 4 violation, per-day.

Failure to submit a Notice of Commencement is a level 3 violation, one-day.

Failure to submit a timely Notice of Commencement (early or late submission, up to 30 days prior to manufacture or 30 to 60 days after

manufacture) is a level 6 violation, one-day. **

Failure to submit a timely Notice of Commencement (early or late submission, more than 30 days prior to manufacture or more than 60 days after manufacture) is a level 4 violation, one-day. **

Withholding information or submitting false or misleading information with regard to a PMN Significant New Use Notice, or exemption request is a level 1 violation, per-day.

Submission of a false Notice of Commencement is a level 1 violation, one-day.

Noncompliance with TSCA 5(e) or 5(f) Orders, Rules or Injunctions and Significant New Use Rules

Violation of on-site restrictions is a level 2 violation, per-day.

Violation of off-site restrictions where the substance was either processed by another firm or, distributed to consumers or released uncontrolled into the environment is a level violation 1, per-day.

Failure to submit a Significant New Use Notice when the substance was not distributed is a level 2 violation, per-day.

Failure to submit a Significant New Use Notice when the substance was distributed to consumers is a level 1 violation, per-day.

Violation of production ban or restriction is a level 1 violation, per-day.

Failure to generate reports as required is a level 2 violation,

** - The total penalty for multiple counts of failure to submit timely NOC is limited to \$100,000 per case.

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Therefore, any violation involving a genetically engineered microorganism will be considered major in extent. Likewise, violations involving any genetically altered or naturally occurring organisms subject to a SNUR or TSCA 5(e) order will be considered major in extent. In the event the Agency identifies low-risk categories of organisms, violations

involving low-risk organisms will be considered significant.

- 6) All Notice of Commencement violations will be considered major in extent, except for failure to submit timely ones which will be considered significant in extent.

Gravity

Gravity, as used in this ERP, is dependent upon the nature, extent and circumstances of the violation.

Per-Day Assessments

Where per-day assessments are provided for in the Circumstances Level section, the base penalty is calculated for the first occurrence of a violative activity and assessed for each day of subsequent occurrence. For example, a manufacturer or importer is responsible for notifying EPA prior to production or importation of a new chemical substance. Each day of production or importation of a new chemical substance in violation of the notification requirements of TSCA §5 constitutes a new violation. A day of violation is counted for each day a chemical substance is produced regardless of the number of batches produced on a given day. The total amount produced on a given day would be used when determining extent. If production of chemical substance takes place over a number of days before the manufacturing process is complete, production occurs only when the manufacturing process has been completed. Likewise, a manufacturer or importer subject to an order, rule or injunction under TSCA §5 which directs him to dispose of the substance or wastes in a particular manner, is in violation for each day disposal occurred contrary to the requirements of order, rule or injunction. Illegal commercial use violations are assessed under the same principles. Commercial use violations, however, are based on the amount of illegally produced chemical substance used.

Per-day penalties assessed on a daily basis (i.e., calendar days vs. days of actual production) are generally reserved for violations of the data-gathering provisions of TSCA §5 where the Agency needs the data to assess the risks presented by a chemical substance, or situations involving imminent hazard.

One-Day Violations

Violations of the recordkeeping provisions of TSCA §5 are assessed on a one-time basis only except where compliance cannot be determined or noncompliance was intentional. See pages 22 and 26 for a

further discussion of these issues.

VIOLATION	LEVEL ONE-DAY	PER-DAY/ NATURE
Failure to submit a timely Notice of Commencement (early or late submission, up to 30 days prior to manufacture or 30 to 60 days after manufacture). **	6 One-day	IIA
Failure to submit a timely Notice of Commencement (early or late submission, more than 30 days prior to manufacture or more than 60 days after manufacture). **	4 One-day	IIA
Withholding information or submitting false or misleading Information with regard to a PMN, Significant New Use Notice, or exemption request.	1 Per-day	IIA
Submission of a false Notice of Commencement.	1 One-day	IIA
Noncompliance with TSCA 5(e) or 5(f) Orders, Rules or Injunctions and Significant New Use Rules		
Violation of on-site restrictions.	2 Per-day	CC
Violation of off-site restrictions where the substance was either processed by another firm or distributed to consumers or released uncontrolled into the environment.	1 Per-day	CC
Failure to submit a Significant New Use Notice when the substance was not distributed.	2 Per-day	CC
Failure to submit a Significant New Use Notice when the substance was distributed to consumers.	1 Per-day	CC
Violation of production ban or restriction.	1 Per-day	CC
Failure to generate reports as required.	2 Per-day	IIA

** - The total penalty for multiple counts of failure to submit timely NOC is limited to \$100,000 per case.